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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,278	03/15/2001	Robert Skvorecz	4336	9274

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ANDERSON, KILL & OLICK, P.C.
1251 AVENUE OF THE AMERICAS
NEW YORK,, NY 10020-1182

EXAMINER

LE, TAN

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 12/09/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/772,278
Filing Date: March 15, 2001
Appellant(s): SKVORECZ, ROBERT

Eugene Lieberstein
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 27, 2005 appealing from the Office action mailed December 30, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,503,062 to Buff, IV.

Claims 1-5 and 7 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Pannu v. Storz Instruments Inc.*, 258 F.3d 1366, 59 USPQ2d 1597 (Fed. Cir. 2001); *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to claim subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the

meaning of 35 U.S.C. 251, and the broader scope of claim subject matter surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

(10) Response to Argument

The examiner's response to appellant's arguments mailed on December 30/2004 is incorporated herein by reference. In the following, the examiner responds to appellant's arguments that has been either addressed or not addressed in the paper mailed on December 30, 2004.

With respect to Appellant's arguments of claims 1-5 and 7 under 35 U.S.C 251 rejection, the examiner still disagrees and remains his position as discussed in the final action mailed 12/30/2004.

With respect to Appellant's arguments of claims 1-2 and 5 under 35 USC 102 as being anticipated by Buff, IV (US Patent No. 5,503,062). The examiner responds as follows:

Claims 1, 2 and 5:

First, Appellant contends that "Buff, IV does not disclose a plurality of "offsets" as defined in claim 1. The examiner respectfully disagrees. Buff IV does teach a plurality of "offsets" (52) along with other limitations of the claim 1, as evidently shown in the exhibit illustrated Fig. 2 below. Note: the examiner believes that exhibits would be helpful in explaining the examiner's position along with the final action mailed December 30/2004.

Second, Appellant's argument appears to rely on a functional language that has either (a) not claimed in the claim (i.e., the term "offset" is a term which is defined in the subject patent in column 2, lines 7-8 as *an indent in each wire at a specific location to cause a lateral displacement of each wire leg 16 relative to the point of attachment of each wire leg 16 with respect to the (first) upper rim 12*) (Page 7, lines 18-21) or (b) relies on the definition in the description in term of functional requirement (i.e. the term "offset" is a term which is defined in the subject patent in column 2, lines 7-8 as an indent in each wire at a specific location to cause a lateral displacement of each wire leg 16 relative to the point of attachment of each wire leg 16 with respect to the (first) upper rim 12) (Page 7, lines 18-21)

As to the case (a) mentioned above, examiner respectfully submits that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns, supra*.

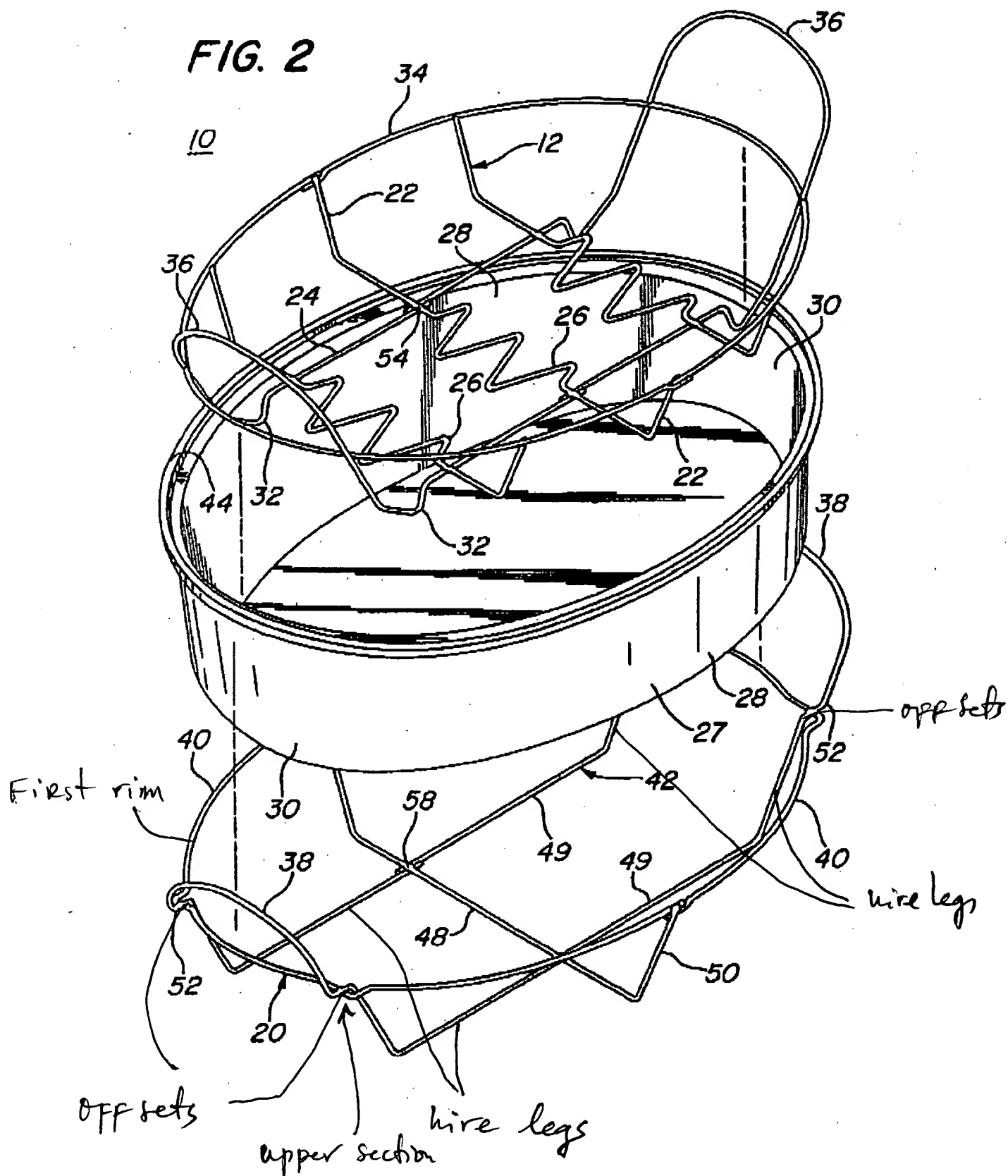
As to the case (b) above, examiner also respectfully submits that the functional recitation as Appellant relied on has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means " for performing the specified function, as set forth 35 USC 112, 6 th paragraph and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. In re Fuller, 1929 C.D. 172; 388 O.G. 279.

Nevertheless, the recitation "for laterally displacing each wire leg relative to said first rim to facilitate the nesting of a multiplicity of stands into one another without

Art Unit: 3632

significant wedging” merely denotes a functional and/or intended use, it does not provide patentability distinguishing structure over the prior art. “A recitation of the functional and/or intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the function/ intended use, then it meets the claim. In the instant case, all the limitations as claimed in claims 1-2 and 5 are fully met by Buff IV as pointed out in the final action. The offsets associated with the up standing framing members (50) and the first rim (40) as taught in Buff IV are also able to facilitate the nesting of a multiplicity of stands (if so desired) into one another without significant wedging (see also col. 5, lines 13-16 and lines 30-34), therefore it meets the claim.

Third, Appellant further contends that since the offset 52 in Buff’062 are disposed or formed over the support wire, they cannot be “located either in the upright sections (19) of the wire legs (16) or in said first rim (12), but can only be located at the coupling between the handles 38 and support members 50 as Buff’062 teaches. The examiner respectfully disagrees. The plurality of offsets (52) of Buff clearly located either in the upright section of the wire legs or in the first rim. Noted that the term “upright section” as recited by Appellant has not been properly identified as to what portions constitute the upright section.



(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

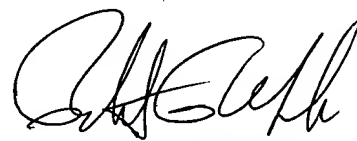
Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Tan Le
November 29, 2005


12/7/05
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